(3)

(A)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 452 /2001

APPELLANT (In Jail) : Devnath Gond,
S/o Dasru Gond,
aged about 40 years,
R/o Soma, Manipur,
P.S. Mainpur
District- Raipur(C'garh).

- Versus -

RESPONDENT : State of Chhattisgarh
Through: S.H.O.
P.S. Mainpur (Raipur).

CRIMINAL APPEAL UNDER SECTION 374(2) OF CR.P.C.

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 452/01 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.V.K.SHRIVASTAVA, JJ

9.10.2006

Mr. K.K. Singh, Advocate for the appellant.

Mr. D.K. Gwalre, Dy. Government Advocate for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J;

This appeal is directed against the judgment of conviction and order of sentence dated 28th March 2001 passed by learned Sessions Judge, Raipur in Sessions Trial No.292/99, whereby learned Sessions Judge after holding the accused/appellant guilty for committing murder of his wife namely Tilo Bai, convicted him under Section 302 of the I.P.C and sentenced to undergo imprisonment for life.

The prosecution case, in brief, was that on 30.3.1999 at about 12.00 noon during the day the accused/appellant was beating his wife Tilo Bai with a club. Mother of accused namely Mangli Bai (PW-2) tried to intervene and also snatched the club, even then the accused/appellant did not stop and continued to assault Tilo Bai. Mangli Bai informed the Village Patel namely Umraon Singh (PW-1). In the meantime, hearing the cries of Tilo Bai the villagers assembled near the house of accused, the accused informed them that she is not preparing food for him, therefore, he will kill her and nobody should interfere. There was profuse bleeding from the wound of the head of Tilo Bai on account of injuries sustained by her and she fell unconscious. The accused/appellant took her to Nala for washing the blood, where PW-3 Govind Singh saw the accused putting water on the body of Tilo Bai and on enquiry the accused informed him that he has

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committed murder of his wife. PW-1 Umraon Singh gave merg intimation (Ex.P-1) in the Police Station Mainpur, upon which F.I.R. (Ex.P-2) for commission of offence under Section 302 of the IPC was registered. The Investigating Officer Shri Santosh Singh (PW-14) left for the scene of occurrence and after giving notice (Ex.P-3) to the Panchas prepared the inquest report (Ex.P-4) of the body of Tilo Bai. He seized the lathi, weapon of offence under Ex.P-5 and clothes of accused under Ex.P-6. Patwari namely Mungel Singh prepared the site plan (Ex.P-8). Body of Tilo Bai was sent for postmortem examination to the Community Health Centre, Mainpur under Ex.P-9, where Dr. K.C. Uraon (PW-5) conducted the postmortem, prepared the report Ex.P-10 and opined that cause of death was cardio respiratory arrest due to intracranial haemorrhage and death was homicidal.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate 1st Class, Gariyabandh, who in turn committed the case to learned Sessions Judge, Raipur, where the prosecution in order to establish the charge against the accused/appellant examined 14 witnesses. Statement of accused/ appellant under Section 313 of Cr.P.C. was recorded in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and learned counsel for the accused, convicted & sentenced the accused in the manner as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed the homicidal death of Tilo Bai. Apart from that, Mangli Bai (PW-2), mother of

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	accused, and PW-1 Umrao Singh-Village Patel, have categorically stated that they saw the accused/appellant inflicting injuries to Tilo Bai with the lathi. Dr. K.C. Uraon (PW-5) has stated that on 31.3.1999 he conducted postmortem on the body of Tilo Bai, the cause of death was cardio respiratory arrest due to intracranial haemorrhage and nature of death was homicidal. Therefore, in view of the above evidence, it is established that the nature of death of Tilo Bai was homicidal. As far as the involvement of accused/appellant in committing the crime in question is concerned, PW-2 Mangli Bai, mother of accused, has stated that on the fateful day at about 12.00 noon when she returned to her house from the forest, she saw that accused & Tilo Bai were quarrelling, Tilo Bai was lying in the courtyard of the house and accused was inflicting injuries on her body with a lathi. She snatched the lathi from her son Deonath and thereafter went to inform Village Patel about the incident. Village Patel Umraon Singh (PW-1) came and tried to persuade Deonath, but he did not stop, on the contrary, he said that he will kill Tilo Bai, on which Umraon Singh became angry and left the place. She also left the place. PW-3 Govind Singh has stated that on the fateful day about 2.00 p.m. he was going towards the Village Nala, he saw the accused in the Nala, his wife was lying in the Nala, blood was oozing out of the body of wife of accused and accused was washing the blood with the water. When he went near, he saw that there was injury on the head of wife of accused, there was profuse bleeding from that injury. Left hand of the wife of accused was broken at two places and he saw that lady was already dead. On which he enquired from the accused as to what he is doing, then the accused disclosed that he has murdered his wife. PW-1 Umraon Singh, to whom the mother of accused informed about the incident, has stated that on coming to know	

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from the mother of accused, he went to the house of accused and saw that he was inflicting injuries on the body of his wife with a lathi and blood was oozing out of the body of Tilo Bai, even after his persuasion the accused did not stop. He was saying that since Tilo Bai was not cooking food for him, therefore, he will kill her. Thereafter, he left for his house and about 5.00 p.m. accused Deonath himself came to him and said that he has murdered his wife. Therefore, in view of the above ocular evidence of PW-1 Umraon Singh, PW-2 Mangli Bai, PW-3 Govind Singh and PW-5 Dr. K.C. Uraon that he noticed several injuries on the body of deceased including on the head, the involvement of the accused/appellant in commission of crime in question i.e. committing murder of Tilo Bai is established. Even mother of the accused has categorically supported the prosecution case, therefore, to this extent we do not find any illegality or irregularity in the finding of the trial court.

Learned counsel for the accused/appellant argued that the accused/appellant assaulted the deceased in a fit of anger with a lathi because the deceased was not cooking food. There was no intention of the accused to cause death of his wife, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part II of the IPC.

On the other hand, learned Dy. Government Advocate for the State supported the judgment of the trial court.

In order to appreciate the argument advanced by learned counsel for the accused/appellant, we have perused the evidence.

As has been mentioned in the earlier part of this judgment that the accused was assaulting his wife Tilo Bai with a lathi, his mother namely Mangli Bai (PW-2) intervened and when accused did not stop, she went to

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	PW-1 Umraon Singh and informed him about the beating given by the accused, on which Umraon Singh (PW-1) came to the house of accused and persuaded him, but he did not stop and said that since she is not cooking food for him, he will kill her. On this, Umraon Singh became angry and left the scene. Perusal of postmortem report (Ex.P-10) shows that the accused assaulted the deceased mercilessly and numerous injuries were caused almost on all parts of body of deceased and even on the skull there was a lacerated wound. There was a lacerated wound on the right parietal region in the size of 3x4cm, there was swelling on the parietal bone, there was a lacerated wound on the forehead and there were injuries on both the forearms. Inside the skull, blood was collected and the brain was congested. The doctor (PW-5) has opined that Tilo Bai died on account of cardio respiratory arrest due to intracranial haemorrhage. Therefore, the manner in which the accused continued to attack the deceased and looking to the number of injuries and that too on the vital organ i.e. head, parietal and frontal bone injuries were inflicted, we are of the considered opinion that intention of the accused to murder Tilo Bai was writ large. As such, we do not find any substance in the argument of learned counsel for the accused/appellant. In the result, we do not find any illegality or irregularity in conviction and sentence imposed upon the accused/appellant by the trial court, the appeal fails and same is dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **V.K. Shrivatava** **Judge**

Roshan/-

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